

10/593,175

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

|  |   |   |                  |
|--|---|---|------------------|
| Applicant's or agent's file reference<br>03M25W Khoobehi   | <b>FOR FURTHER ACTION</b>   |   | See item 4 below |
| International application No.<br>PCT/US2005/009185   | International filing date ( <i>day/month/year</i> )<br>18 March 2005 (18.03.2005) | Priority date ( <i>day/month/year</i> )<br>19 March 2004 (19.03.2004) |                  |
| International Patent Classification (8th edition unless older edition indicated)<br>See relevant information in Form PCT/ISA/237 |   |   |                  |
| Applicant<br>BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE                          |   |   |                  |

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 *bis*.1(a).

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- |                                     |              |   |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I    | Basis of the report   |
| <input type="checkbox"/>            | Box No. II   | Priority  |
| <input type="checkbox"/>            | Box No. III  | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability  |
| <input type="checkbox"/>            | Box No. IV   | Lack of unity of invention  |
| <input checked="" type="checkbox"/> | Box No. V    | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/>            | Box No. VI   | Certain documents cited   |
| <input type="checkbox"/>            | Box No. VII  | Certain defects in the international application  |
| <input type="checkbox"/>            | Box No. VIII | Certain observations on the international application   |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

|  |   |
|--|---|
| <p style="text-align: center;">The International Bureau of WIPO<br/>34, chemin des Colombettes<br/>1211 Geneva 20, Switzerland</p> <p>Facsimile No. +41 22 338 82 70</p> | <p>Date of issuance of this report<br/>19 September 2006 (19.09.2006)</p> <p>Authorized officer<br/><br/>Beate Giffo-Schmitt</p> <p>e-mail: pt03@wipo.int</p> |
|--|---|

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

REC'D 17 NOV 2005

**PCT**

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To:  
BONNIE J. DAVIS  
TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.  
P.O. BOX 2471  
BATON ROUGE, LA 70821-2471

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

|   |   |
|---|---|
| Date of mailing<br>(day/month/year) <b>15 NOV 2005</b>  |   |
| <b>FOR FURTHER ACTION</b><br>See paragraph 2 below  |   |
| Applicant's or agent's file reference<br><b>03M25W KHOOB</b>  |   |
| International application No.<br><b>PCT/US05/09185</b>  | International filing date (day/month/year)<br><b>18 March 2005 (18.03.2005)</b> |
| Priority date (day/month/year)<br><b>19 March 2004 (19.03.2004)</b>   |   |
| International Patent Classification (IPC) or both national classification and IPC<br><b>IPC(7): A61B 6/00 and US Cl.: 600/476</b> |   |
| Applicant<br><b>BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE</b>                    |   |

**1. This opinion contains indications relating to the following items:**

- ☒ Box No. I      Basis of the opinion
- ☐ Box No. II      Priority
- ☐ Box No. III      Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV      Lack of unity of invention
- ☒ Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI      Certain documents cited
- ☐ Box No. VII      Certain defects in the international application
- ☐ Box No. VIII      Certain observations on the international application

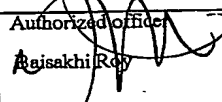
**2. FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

**3. For further details, see notes to Form PCT/ISA/220.**

|  |   |   |
|--|---|---|
| Name and mailing address of the ISA/ US<br>Mail Stop PCT, Attn: ISA/US<br>Commissioner for Patents<br>P.O. Box 1450<br>Alexandria, Virginia 22313-1450<br>Facsimile No. (703) 305-3230 | Date of completion of this opinion<br><b>21 September 2005 (21.09.2005)</b> | Authorized officer<br><br><b>Raisakhi Roy</b><br>Telephone No. 571-272-7139 |
|--|---|---|

Form PCT/ISA/237 (cover sheet) (April 2005)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/09185

Box No. I - Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed .  
☐ a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing  
☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper  
☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.  
☐ filed together with the international application in electronic form.  
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/US05/09185

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

|                               |                    |     |
|-------------------------------|--------------------|-----|
| Novelty (N)                   | Claims <u>NONE</u> | YES |
|                               | Claims <u>1-13</u> | NO  |
| Inventive step (IS)           | Claims <u>NONE</u> | YES |
|                               | Claims <u>1-13</u> | NO  |
| Industrial applicability (IA) | Claims <u>1-13</u> | YES |
|                               | Claims <u>NONE</u> | NO  |

2. Citations and explanations:

Claims 1-13 lack novelty under PCT Article 33(2) as being anticipated by Jacques et al. (5353790). Jacques et al. disclose a method for determining hemoglobin oxygen saturation in a tissue in vivo by measuring the visible reflectance spectrum or the visible absorbance spectrum of the tissue over a portion of the range of wavelength between 530 nm and 584 nm (abstract, fig. 1, col. 2 lines 40-68, col. 3-4, col. 10 lines 42-57, col. 41 lines 28-67).

Claims 1-13 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

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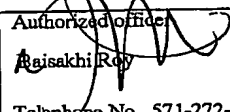
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